(2021) 08 UK CK 0166

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 1557 Of 2021

Ajay Pandey APPELLANT

Vs

District Magistrate Collector Nainital And Others RESPONDENT

Date of Decision : 11-08-2021

Acts Referred:

United Provinces Excise Act Of, 1910 — Section 28, 40
Constitution Of India, 1950 — Article 226

Citation : (2021) 08 UK CK 0166

Hon'ble Judges : Sharad Kumar Sharma, J

Bench : Single Bench

Advocate : Rahul Adhikari, Ajay Singh Bisht, Suyash Pant

Final Decision : Dismissed

Judgement

Sharad Kumar Sharma, J

(Through Hybrid Mode)

1. The provisions of the United Provinces Excise Act of 1910 (hereinafter to be called as â??the Act of 1910â?), has been made applicable to the

State of Uttarakhand, as per the provisions contained under the Reorganisation Act of 2000. Under Section 40 of the Act of 1910, it grants the power

to the State, to make the Rules or the provisions for the purposes of governing the process of allotment of the liquor shops, which has been defined or

as classified in the Act of 1910, dealing with the nature of liquors and the duties, which would be payable towards it as dealt with under Section 28 of

the Act of 1910.

2. Exercising the source of power under Section 40 of the Act, the State of Uttarakhand has framed a Policy, called as â??The Uttarakhand Excise

Policy Regulation 2020â?, which has been notified in the Official Gazette No. 135/ XXIII//2020/04(01)2020 dated 22.02.2020. It is under the modalities

which had been provided for the purposes of allotment of the liquor shops, under which the petitioner too was allotted with a license, to run a liquor

shop of English liquor and FSL license was granted to him for operating two shops at Haldwani Mandi and Kaladhungi road for the year 2020-21.

3. The petitioner has come up in the writ petition that as against the recovery citation, which was issued on 19.07.2021, wherein the respondents had

contemplated to recovery an amount of Rs. 1,26,45,000/-, which was said to be due towards the minimum monthly guarantee, which was payable by

the petitioner, under the terms of the license, which has been executed in his favour.

4. The sole ground, which has been pleaded and argued by the learned counsel for the petitioner in the present writ petition is that on account of the

prevalent pandemic situation, which was uncalled for and due to sever natural social calamity, which the society suffered and on account of lockdown

imposed by the directives of the Government of India, he was not able to operate the aforesaid two shops for a considerable time though, as against

for which the allotments was made for those shops, the monthly minimum guarantee amount continued to be accrued against the petitioner, which has

been sought to be recovered.

5. It is not in dispute and rather the petitioner admits, the fact that his allotment would be governed by the terms of the Excise Act of 1910, and the

policy framed thereunder under Section 40 of the Act, which takes the shape of a subordinate legislation, which would bound the interse conditions of

allotment of liquor shops to the petitioner as described above.

6. But, however, in order to meet up the said contingency where on account of any force majeure the petitioner is unable to pay the excise liability

payable under the license, the policy itself which has been notified on 22.02.2020, provides with a mechanism where the petitioner can agitate his

grievances i.e. before the Committee, as constituted under Clause 35 of the Uttarakhand Excise Policy Regulations 2020. Clause 35 of the said Policy

is extracted hereunder:

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7. In these eventualities, where the petitioner has been provided with a platform under the law, for the purposes of redressal of his grievance, under

the circumstances, which have been narrated in the writ petition, this writ petition would not be maintainable and, the appropriate recourse available to

the petitioner would be to approach before the Committee for the redressal of his grievance as against the recovery proceedings, which was initiated

against him for the recovery of the minimum monthly guarantee amount payable by him.

8. In view of the aforesaid Clause 35 of the Uttarakhand Excise Policy Regulations 2020, this Court declines to exercise its extraordinary jurisdiction

under Article 226 of the Constitution of India and relegates the matter directing the petitioner to approach before the Committee, as contemplated

under Clause 35 of the said Excise Policy of 2020, for the redressal of his grievances.

9. The learned counsel for the petitioner had made reference to a judgment which was rendered by the coordinate Bench of this Court in a Writ

Petition (M/S) No. 1103 of 2021, Jasbir Kaur Vs. State of Uttarakhand and others, wherein he contends that for the same financial year, where

the Indian made foreign liquor shop was allotted to some of the allottee(s) petitioner therein, an identical recovery proceedings was initiated, in which

the revenue was sought to be recovered; as an arrears of land revenue and the writ petition was preferred before the coordinate Bench of this Court

and the coordinate Bench of this Court had passed an order, whereby certain accommodations/latitude, were given to the petitioner therein for

depositing the amount in instalments under the terms and criterias, as laid down in para 4 of the said judgment. The petitioner seeks a parity of the

same.

10. But, this Court, with all humility at its command, is not in agreement with the judgment rendered by the coordinate Bench of this Court for the

reason being that:-

(i) The Court has not taken into consideration the impact and legal implications of the subordinate legislation, provided under Clause 35 of the Policy, framed under Section 40 of the Act itself, which has got a statutory force and would be interse binding between the allottee and the Government.

(ii) Secondly, the Court carves out a distinction, in order to not to apply the same principles in the case of petitioner for the reason being that in the said

case, the learned Advocate General, who appeared on behalf of the State had expressed his willingness to the offer extended by the petitioner to

accept the amount in instalments.

11. In that eventuality, where the willingness has been extended by the respondent/State, to accept the amount demanded in instalments, it will not be

a ratio decidendi, which can be taken as to be a precedent, to be invariably applied in all cases as a parity. Hence, I am of the view that the

principles laid down in the said judgment would not be applicable in the given set of circumstances, because the relief claimed by the petitioner had

been vehemently opposed by the learned Addl. CSC for the State.

12. Consequently, the writ petition is dismissed; subject to the liberty left open to the petitioner to approach before the Committee, constituted under

Clause 35 of the Policy, for the redressal of his grievance.